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ABSTRACT

This module is one of a set of seven prepared in conjunction with the Title I "Project to Train Volunteer Leaders to Conduct Consumer Education Courses." It is designed to be a basic text for use in making a one-hour presentation on sources of consumer assistance. Topics include consumers' alternatives for self-help, functions of the Virginia Office of Consumer Affairs, functions of the local consumer affairs offices in Virginia, procedures for making claims in courts not of record, common law remedies available to consumers, the Uniform Commercial Code, Virginia Consumer Protection Act of 1977, prohibited activities pertaining to sales, and the Virginia Home Solicitation Sales Act. An accompanying slide set is keyed to the text of the module. (An illustration of each slide is provided.) A true-false quiz, discussion questions, and a bibliography are also included. A self-help guide outline, consumer phone numbers, sources of legal assistance for military personnel, general sources of consumer information, and a complaint flow chart are appended. (CT)

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SOURCES OF ASSISTANCE

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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CONSUMER EDUCATION PROJECT
Project to Train Volunteer Leaders to Conduct
Consumer Education Courses
Title I, Higher Education Act of 1965
Grantee Institution: Northern Virginia Community College
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July, 1979

Consumer Education Project

This module is one of a set of seven prepared in conjunction with the Title I "Project to Train Volunteer Leaders to Conduct Consumer Education Courses." It is designed to be a basic text for use in making a one-hour presentation. Through use of the attached bibliography, a more in-depth knowledge can be acquired and the presentation expanded. For shorter presentations, portions of it can be extracted. A slide set accompanies each module and is keyed to the text of the module. For a guide to presentation skills, the reader is referred to the module entitled Leadership and Teaching Skills.

Volunteers throughout the Northern Virginia area have been trained to give presentations on the following six consumer-related topics for which modules have been developed:

Rights and Responsibilities in the Marketplace
How to Buy Goods and Services
Personal Money Management
Legal Aspects of the Marketplace
Credit
Sources of Consumer Assistance

The services of these volunteers are available to citizen groups, schools, and organizations through the state and local consumer affairs offices listed in the paragraph below. The purpose of this program is to increase consumer awareness and raise the level of individual consumer competency among our citizens.

The grant establishing this project was awarded to Northern Virginia Community College by the State Agency for Title I under the Higher Education Act of 1965. The program, however, is a cooperative effort involving the Consortium for Continuing Higher Education in Northern Virginia, George Mason University, the University of Virginia, Virginia Polytechnic Institute and State University, as well as the Virginia Office of Consumer Affairs, the Alexandria Office of Consumer Affairs, the Arlington County Office of Consumer Affairs, the Fairfax County Department of Consumer Affairs, and the Prince William County Office of Consumer Affairs.

For additional information, call or write:

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3033 Williams Drive
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SOURCES OF ASSISTANCE

VOLUNTEER LEADER'S GUIDE

SOURCES OF ASSISTANCE

Introduction

This guide is intended to provide a framework around which you can build your presentation. While it is complete enough for you to read verbatim and make a passable talk on sources of consumer assistance, your presentation will be much more interesting if you add to it from your own background and research. A selected bibliography is provided for your use in researching your subject and expanding this guide. You should keep abreast of new developments in sources of consumer assistance and incorporate them in your presentation when you can.

Pre-presentation Arrangements

Check the facility in which your presentation is to be made to insure that:

1. Seating is adequate and as comfortable as possible.
2. All audio-visual equipment and materials are present and in proper working order.
3. Lighting and projection equipment operate properly.
4. You know where the switches for lights and electrical outlets are, and how they work.
5. Handout materials are available in sufficient quantities for the prospective audience.
6. Others involved in the presentation, either as technicians or guest speakers, know how they fit into the presentation schedule.

Presentation Outline

I. TITLE: Sources of Assistance

II. OBJECTIVES: Upon completion of this presentation, participants will be able to:

A. List the consumers' alternatives for self-help.

B. Explain the functions of the Virginia Office of Consumer Affairs.

C. Explain the functions of the local consumer affairs offices in Virginia.

D. Outline procedures for making claims in courts not of record.

E. Name the common law remedies available to consumers.

F. Name remedies available to consumers under the Uniform Commercial Code.

G. Describe the remedies available to consumers under the Virginia Consumer Protection Act of 1977.

H. List prohibited activities pertaining to sales.

I. State the provisions of the Virginia Home Solicitation Sales Act.

J. Describe measures taken to enforce prohibitions against sales abuses in the provisions of the Virginia Home Solicitation Sales Act.

III. LENGTH: 1 hour (This time may be increased or decreased according to the needs of the audience, your ability as an instructor, and the time available.)

IV. AUDIO-VISUAL AIDS:

A. Slide set, "Sources of Assistance" consisting of 39 slides.

B. Thirty-five millimeter Carousel projector.

C. Chalkboard, chalk and eraser.

V. TEACHING PROCEDURE:

Note: In the following material, instructions are single-spaced and the text of the presentation is double-spaced.

Special Instructions	Instructor Reference
Write your name on the chalkboard	A. Introduction

Turn on projector
Show slide SCA-1
Project Slide

SOURCES OF CONSUMER ASSISTANCE

Consumer Education Project

PROJECT TO TRAIN VOLUNTEER LEADERS TO CONDUCT CONSUMER EDUCATION COURSES--TITLE I, HIGHER EDUCATION ACT OF 1965

Grantee Institution--Northern Virginia Community College

SCA-1

Show slide SCA-2
Sources of Consumer Assistance

SOURCES OF CONSUMER ASSISTANCE

* Self-Help
* Agency Help
* Legal Remedies

SCA-2

1. Introduce yourself and give the title of your presentation. If the format of your presentation is to be a discussion and the audience is small enough, you may want to conduct self-introductions. If you do, you should ask each participant to give his name and a little information about his background.

2. Briefly outline your qualifications to discuss this particular subject.

3. Explain the importance of knowing sources of consumer assistance to consumers in general and for the group you are addressing in particular.

Show slide SCA-3
Specific Objectives

SPECIFIC OBJECTIVES

Upon completion of this program you will be able to:

* List the consumers' alternatives for self-help.
* Explain the functions of the Virginia Office of Consumer Affairs.
* Explain the function of the local consumer affairs offices in Virginia.

SCA-3

Show slide SCA-4
Specific Objectives
(Continued)

SPECIFIC OBJECTIVES (Continued)

* Outline procedures for making claims in courts not of record.
* Name the common law remedies available to consumers.
* Know the Uniform Commercial Code.
* Describe the remedies available to consumers under the Virginia Consumer Protection Act of 1977.

SCA-4

Show slide SCA-5
Specific Objectives
(Continued)

SPECIFIC OBJECTIVES (Continued)

* List prohibited activities pertaining to sales.
* State the provisions of the Virginia Home Solicitation Sales Act.
* Describe measures taken to enforce prohibitions against sales abuses in the provisions of the Virginia Home Solicitation Sales Act.

SCA-5

4. State the specific objectives of your presentation in terms of what the participants will be able to do upon its completion.

5. Explain any evaluation procedure you plan to use to measure accomplishment of these objectives. The procedure you use should be non-threatening to the participants and designed to measure your effectiveness as a presenter rather than their proficiency as learners. If you wish to use a quiz to summarize your presentation, a sample is provided at the end of the module.

6. Set the tone for your presentation.

a. Encourage questions and discussion.

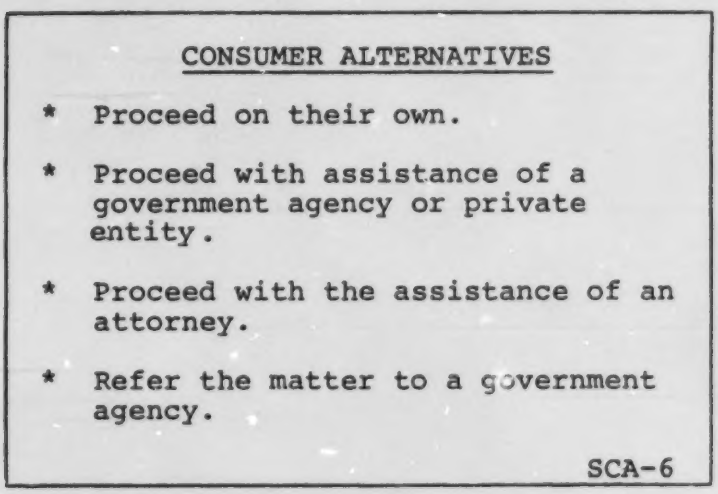
b. Explain the availability of handouts and how they will be distributed.

c. Tell whether or not notetaking is desirable.

NOTE: Some of the terms used in this presentation are not a part of everyday vocabulary. Check frequently for understanding and define terms as necessary.

B. Presentation

Show slide SCA-6
Consumer Alternatives


CONSUMER ALTERNATIVES
* Proceed on their own.
* Proceed with assistance of a government agency or private entity.
* Proceed with the assistance of an attorney.
* Refer the matter to a government agency.
SCA-6

1. Citizens as consumers may be confronted with a variety of problems. There are four principal ways in which they can attempt to solve them. They can proceed on their own; proceed with the assistance of a government agency or private entity; proceed with the assistance of an attorney; or refer the matter completely to a governmental agency for enforcement. These procedures are not mutually exclusive and the specific one or ones chosen will depend on many factors; e.g., nature of the problem, and the availability of governmental assistance.

a. One very basic, but often ignored, approach is simply to talk with or write to the other party involved. Consumers should always exhaust this approach before considering any other. The procedures are:

1) Have all documents pertaining to the questioned transaction available including: warranties, business cards, advertisements, memoranda of all discussions, and the name(s) and positions of all persons contacted regarding the matter.

2) Know the provisions of law which apply to the transaction.

3) Before contacting the merchant, know what relief you are seeking and the minimum relief you expect and will accept. Be sure that your expectations are realistic. Organize your arguments in chronological or some other logical order.

4) When you call or go see the merchant, be sure you are talking to an individual who can make a decision, either the manager or some one designated by him to handle consumer complaints. Find out whom you would contact to appeal his decision. Take a disinterested person with you as a witness, if possible. Present your case calmly, courteously and in orderly fashion.

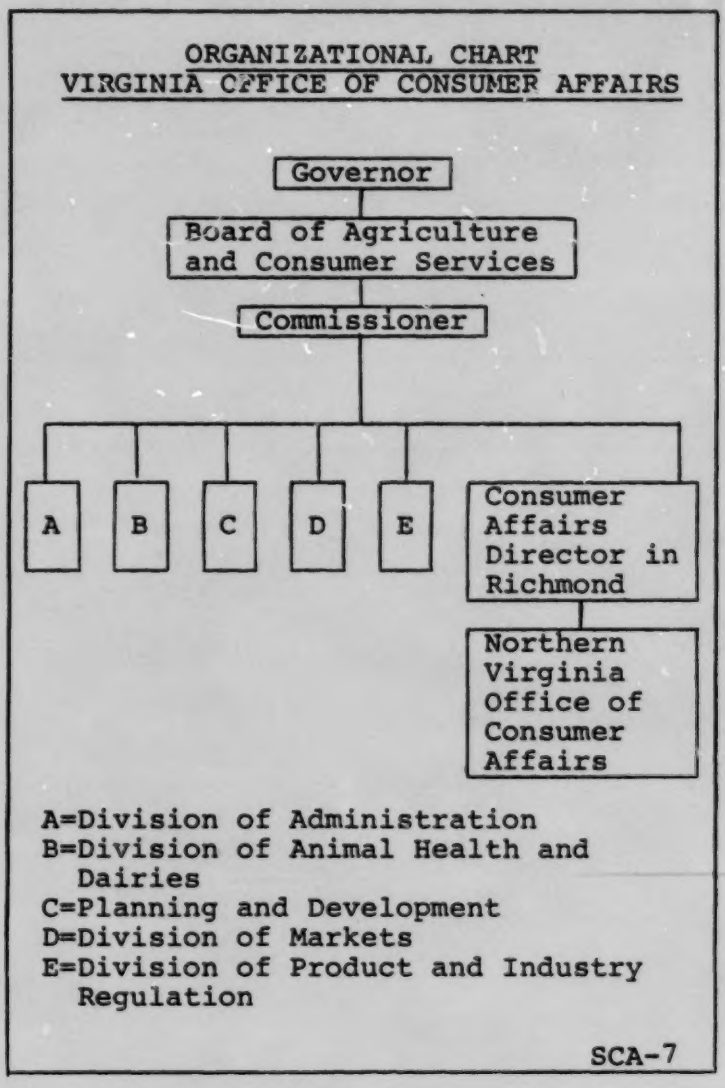
5) After you have presented your case, allow the merchant's representative time to investigate if necessary. Before leaving, have a definite understanding concerning when action can be expected or an answer forthcoming. Make specific arrangements concerning how and when the reply to your complaint will be made. Make complete notes on what is said during the meeting.

6) Seek third party assistance from the trade association, corporation, distributor, or manufacturer to which the merchant belongs or is associated.

b. If the consumer is unable to resolve his problem with this approach, he should seek assistance at either the Virginia Office of Consumer Affairs or one of the local consumer offices. When the problem is within the jurisdiction of some other governmental agency (whether local, state, or federal), these offices can coordinate a referral. Thus the consumer need not go from agency to agency in search of one which can help. These offices can also put the consumer in touch with industry, or other private entities which might be of assistance in solving his problem. There are a number of governmental agencies at various levels and many private organizations which can be of assistance in specific types of problems. Consumers should be aware that offices of consumer affairs exist, that their employees know a great deal about

sources of assistance and that these offices should be the first place they go for assistance when they are unable to resolve a problem themselves.

Show slide SCA-7
Organizational Chart
Virginia Office of
Consumer Affairs



2. The Virginia Office of Consumer Affairs was created by the General Assembly in 1970 and was assigned to the Department of Agriculture and Commerce. In July, 1978, this department was renamed the Department of Agriculture and Consumer

Services. Its entire statutory basis can be found in Virginia Code section 3.1-18.1 through section 3.1-18.3. The specific powers are set forth in section 3.1-18.2. They are so limited that, if they had been followed literally, the agency would have been all but useless. Fortunately, they have been read somewhat broadly. The office's principal expressed powers of any significance are 1) "(to) promote consumer education . . .," and, as noted above, 2) "(to) serve as a central coordinating agency and clearing house for receiving complaints by Virginia consumers of illegal, fraudulent, deceptive or dangerous practice . . ." This limited authority has been broadened in two areas.

a. The first area is in mediation between consumers and other parties. There is no way the OCA can force anyone to afford relief to the consumer, but in many instances, parties will do so when contacted by the OCA, even after they have refused a request directly from the consumer. The likelihood of such willingness is greatly increased

when the conduct in question arguably constitutes a violation of state law for which the Attorney General's Office is authorized to institute an enforcement proceeding. Through such mediation, thousands of consumer problems have been resolved to the consumer's satisfaction which otherwise would have required court action (or would simply have been dropped by the consumer). In a large percentage of such cases, settlement of the specific problem is all that is warranted; i.e., the dispute is a good faith misunderstanding with no illegal practices involved. In others, however, the practice in question is an illegal consumer rip-off in which the perpetrator would rather satisfy the occasional complainer than risk an in-depth examination of his operation.

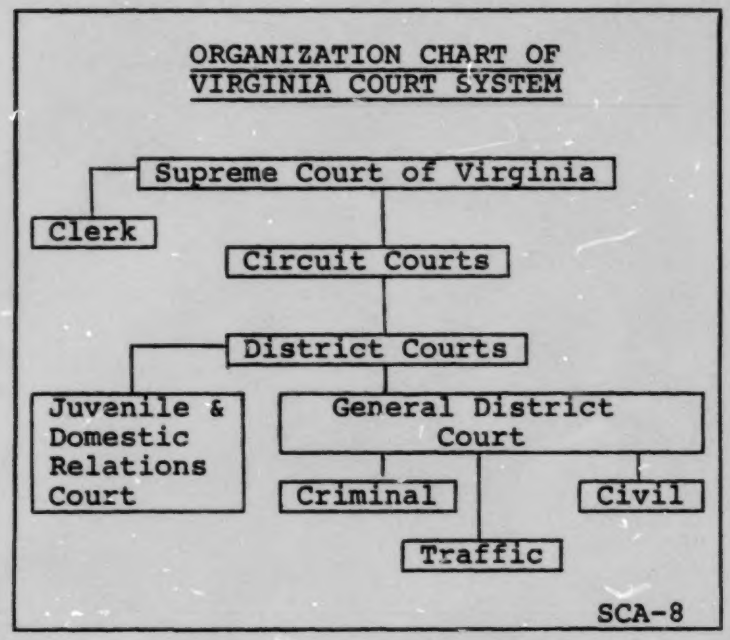
b. In the instance of an illegal consumer rip-off, OCA cannot take any action directly against such practices, but the second area in which it has extended its authority is in investigating questionable practices and providing assistance to the enforcement authority in taking action. Whether

the enforcing authority is the Attorney General's Office, a commonwealth's attorney, or a city/county attorney in a particular locality, this extention is an extremely vital one, since these offices have the authority to investigate, but no investigators. The Virginia Consumer Protection Act of 1977 gives the Commissioner of the Department of Agriculture and Consumer Services, or his designated representative, the authority to investigate "possible violations" of the act and "to request, but not to require, the appropriate legal official to bring an action to enjoin such violation."

3. Under the theory of local government law followed in Virginia, cities and counties have only those powers expressly delegated to them by the General Assembly. Thus, they have no inherent authority to set up a local office of consumer affairs, or at least not one with authority to do anything. Nevertheless, several local jurisdictions did so before 1974, when the General Assembly authorized them to set up local offices with the same

powers as the State ones. As might be expected, these powers have been read at least as broadly by the local offices of consumer affairs as they have by the State Office.

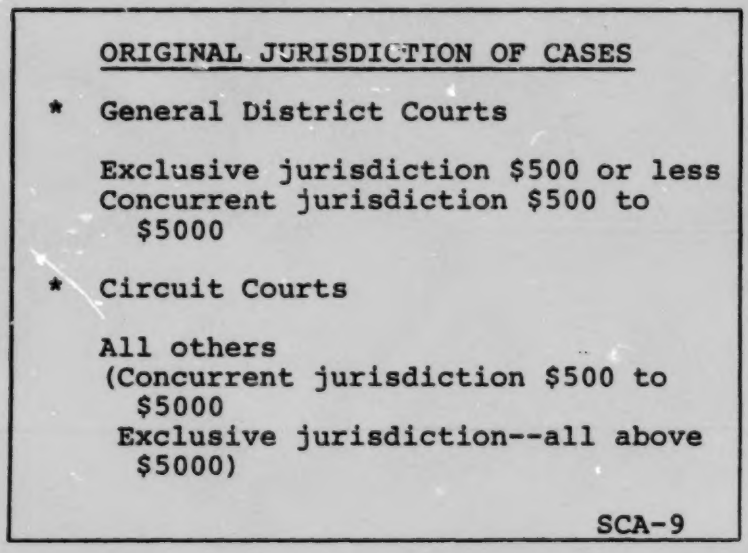
Show slide SCA-8
Organization Chart of
Virginia Court System



4. If attempts to negotiate a mutually agreeable settlement fail, the consumer must consider recourse through the courts. There are no small claims courts as such in Virginia. There are courts not of record and courts of record. The former are known as general district courts and the latter as circuit courts. The statutes applicable to General District Courts are found in Title 16.1 of the Code of Virginia.

The State is divided into 31 districts, and the consumer's first hurdle is to choose one in which the law allows the case to be brought. This choice should not present great difficulty, however, for the case may always be brought in a district where the defendant resides or has his principal place of business, or in one where all or part of the transaction (which gave rise to the dispute) occurred.

Show slide SCA-9
Original Jurisdiction of Cases



a. These courts have exclusive original jurisdiction of cases in which the amount of the consumer's claim (exclusive of interest and attorney's fees contracted for in the disputed transaction) does not exceed $500. This means that these cases can be brought

only in general district courts. They also have concurrent jurisdiction with the circuit courts in claims between $500 and $5,000. These actions can be brought in either court. The defendant, however, may obtain their removal from a general district court to a circuit court by filing an affidavit claiming that he has a "substantial defense." He must describe this defense in the affidavit, pay all accrued costs in the general district court, and pay any filing costs in the circuit court. There is nothing the consumer can do to block this removal.

b. The procedures in a general district court are simpler than those in a circuit court, but they are not easy and were not developed for the purpose of providing a readily accessible forum for private suits by individual consumers. It is not an easy task for a consumer to assert his rights in a general district court. Neither is the task an impossible one.

Show slide SCA-10
Factors in Decisions to
Initiate Court Action

FACTORS IN DECISIONS TO INITIATE COURT ACTION

* Loss of work time
* Evidence available
* Witnesses available
* Possible counter actions
  - Delaying tactics
  - Remand to higher court
* Problems of collection

SCA-10

c. Before making the decision to initiate a court action, the consumer should consider factors other than procedural difficulties. For example:

1) court is held only during the day, this time may be lost from work;

2) the consumer must have any documentary evidence necessary to substantiate his claim or the ability to obtain it;

3) he must have any witnesses (who might also have to take time off from work) in court to substantiate his claim;

4) there is always the possibility of an attempt by the defendant to wear him down through

delaying tactics such as last minute requests for continuance when consumers and witnesses are already in court;

5) there is also the possibility that the defendant may request removal of the case to a circuit court where it will be much more difficult for the consumer to proceed without an attorney; and

6) the question of whether judgment can be collected if obtained is always present.

Show slide SCA-11 Procedure to Bring Action--General District Court

PROCEDURE TO BRING ACTION--
GENERAL DISTRICT COURT

* Complete warrant
* Pay fees
* Obtain file number
* Gather evidence
  - Subpoenas
  - Affidavits
  - Accounts

SCA-11

d. Actions may be brought in a general district court either by warrant or motion for judgment. The former is the simpler procedure and is as follows:

1) A warrant must be completed. Blank warrants may be obtained

in the Clerk's Office of the Court. Personnel in these offices are often willing to provide assistance in completing the warrant.

2) The consumer must pay a nominal filing fee and a fee to receive service on each defendant. Unless there are numerous defendants, these costs should not exceed $10.

3) The action must be filed. Once it is filed, it will be assigned a file number and be placed on the court's civil docket. The consumer should make a record of the file number and can learn the date and time for trial by calling the clerk's office.

4) Evidence must be gathered. If documentary evidence which the consumer needs to establish his claim is in the hands of the defendant or a third person, and the consumer is unable to secure its voluntary production, he may seek to have the court issue a subpoena. To obtain such a subpoena, the consumer must present an affidavit of himself or some other person describing the desired evidence and naming the person who is desired to

produce it. The affidavit must state that to the best of the affiant's belief the papers or other writings are relevant to the trial of the case. All such affidavidts must be notarized. This procedure may only be used when the court has jurisdiction over the person or corporation upon whom the subpoena is to be served. The judge may enforce the subpoena through punishment for contempt.

e. The amount of the consumer's claim must be established at $500 or less either by evidence or by sworn statement of competent authority. In some cases, such as claims for damages, "competent authority" can be an expert in assessing the type of damage involved and his statement must include the basis for his expertise. In claims based on either an expressed or an implied contract, the claimant can establish the amount by stating it in an affidavit and attaching the affidavit and a copy of the account to the warrant or motion for judgment when filing.

f. The Virginia Code requires that the general district courts take

all possible actions "to bring about a trial on the merits" of a controversy and "promote substantial justice to all parties." No action may be dismissed because of a defect in the proceedings or form of the pleadings if the defect can be corrected by an order of the court. The judge has substantial discretion, however, in those matters.

Show slide SCA-12
Actions After Judgment

ACTIONS AFTER JUDGMENT

* Appeal
* Satisfaction of judgment
* Enforcement of judgment
  - Specific performance
  - Award of possession
  - Award of money

SCA-12

g. After a consumer obtains a judgment in his favor, he is only halfway home. The first obstacle is that the losing party in such cases has an absolute right of appeal to a court of record in all cases where the value of the matter in controversy exceeds $50. This right must be exercised within 10 days of the date of the order. As noted earlier, procedures

in the courts of records are more complex, however, and make it more difficult for the consumer to proceed without the assistance of an attorney. There is one plus for the consumer in this procedure. In order to obtain this appeal, the losing party must post a bond to insure that the judgment will be satisfied if the judgment is affirmed on appeal. This brings us to the consumer's principal problem after obtaining a judgment; that of obtaining satisfaction of the judgment. It may be that the defendant will simply do what the judgment directs, but the consumer must be prepared to take whatever legal action is necessary to enforce the judgment. The specific action required will depend upon the nature of the relief awarded.

1) If the relief was specific performance, that is, if the court ordered the defendant to do or not to do some action, failure to comply is punishable by contempt, but the consumer must file a paper with the court informing it of that failure.

2) If the relief was an award of possession of some personal property, the consumer must request the Clerk of the Court to issue a writ of possession, which will be executed by the sheriff.

3) If the relief is an award of money, the consumer must request the Clerk of the Court to issue a writ of fieri facias, which will be executed by the sheriff through seizure of property. The property will be sold and the proceeds used to satisfy the judgment. A writ of fieri facias can also be executed through a summons in garnishment against the defendant's employer, bank, or other entity which has funds belonging to the defendant.

h. Statistics indicate that a consumer is much more likely to find himself in a general district court as a defendant than as a plaintiff, since the principal use of these courts is by merchants, contractors, and small loan companies. Consumers should never simply ignore a warrant or motion for judgment served on them from a general district court, or any other court.

If they have a defense, they must be sure to appear in court and assert it. Even if they do not have a defense, they should keep abreast of what is going on or one day they will find the sheriff executing a writ of fieri facias on their car, or a summons in garnishment being served on their employer.

5. The term common law means simply that the principles included within that body of law have developed through court decisions rather than legislative enactments.

a. The single most important thing about common law remedies is that they can be enforced only in a court. Either the consumer, or an agency acting in his behalf, may use the alleged existence of such remedies in attempts to effect a voluntary settlement of a dispute, but only a court can compel the granting of relief under a common law remedy.

b. Another element of common law remedies is that they can be amended, or even abolished by statute.

Show slide SCA-13
Principal Common
Law Remedies

PRINCIPAL COMMON LAW REMEDIES

* Breach of contract
* Breach of warranty
* Strict liability in tort
* Deception/Fraud/Misrepresentation
* Unconscionability

SCA-13

c. The principal common law remedies which may be used to redress consumer grievances are breach of contract, breach of warranty, strict liability in tort, fraud, and unconscionability.

Show slide SCA-14
Principal Common
Law Remedies -
Breach of Contract

PRINCIPAL COMMON LAW REMEDIES

* BREACH OF CONTRACT
* Breach of warranty
* Strict liability in tort
* Deception/Fraud/Misrepresentation
* Unconscionability

SCA-14

1) Breach of contract is one of the most common causes of consumer complaint. A contract is an agreement between parties in which each agrees to convey something of value to the other. Most consumer transactions involve a contract in which the consumer

agrees to pay a specified sum for either the purchase of something or for the performance of some service. It does not have to be in writing, but it is much easier to prove the contract's existence and its terms when it is a written one. The consumer's first concern is to insure that the written contract accurately reflects his understanding of the terms. Many contracts used in consumer transactions contain what is known as a parol evidence clause. This clause states that the written instrument constitutes the complete agreement. If he signs a contract with such a clause, it will be extremely difficult for the consumer to establish a breach of contract because of failure to comply with promises which were made orally, but not reflected in the written instrument. A violation of any term of a contract constitutes a breach. Thus, failure to deliver at all, delivery of a different quality or quantity, not completing the job as specified, all constitute breaches of contract. Depending on the nature of the contract,

the consumer may seek specific performance, a refund of money paid, or damages. He may also use such acts as a defense if the other party sues him. The consumer should retain all documentary or other evidence relating to a contract at least until performance has been completed to his satisfaction.

Show slide SCA-15
Principal Common Law Remedies - Breach of Warranty

PRINCIPAL COMMON LAW REMEDIES

* Breach of contract
* BREACH OF WARRANTY
* Strict liability in tort
* Deception/Fraud/Misrepresentation
* Unconscionability

SCA-15

2) Breach of warranty is a specialized form of breach of contract. It has been codified and will be discussed later under statutory remedies.

Show slide SCA-16
Principal Common Law Remedies - Strict Liability in Tort

PRINCIPAL COMMON LAW REMEDIES

* Breach of contract
* Breach of warranty
* STRICT LIABILITY IN TORT
* Deception/Fraud/Misrepresentation
* Unconscionability

SCA-16

3) A tort is simply a form of wrongful conduct which causes injury. Examples include negligence, libel, battery and invasion of privacy. Strict liability in tort is a relatively new doctrine which was developed to make it lawful to sue persons or organizations which put defective merchandise on the market and caused injury, even if they did not sell the merchandise directly to the consumer. Because of the amounts of damage and the complexities of this kind of case, the consumer should consider engaging an attorney to bring the action.

Show slide SCA-17 Principal Common Law Remedies - Deception/Fraud/ Misrepresentation

PRINCIPAL COMMON LAW REMEDIES

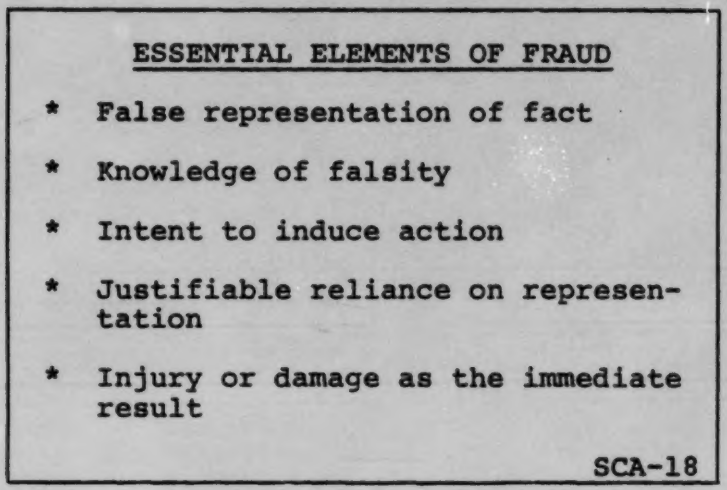
* Breach of contract
* Breach of warranty
* Strict liability in tort
* DECEPTION/FRAUD/MISREPRESENTATION
* Unconscionability

SCA-17

4) The terms deception, fraud, and misrepresentation are used interchangeably for another cause of action in tort which covers situations in which the consumer has been induced

to enter into a contract under false pretences.

Show slide SCA-18
Essential Elements
of Fraud


ESSENTIAL ELEMENTS OF FRAUD
* False representation of fact
* Knowledge of falsity
* Intent to induce action
* Justifiable reliance on representation
* Injury or damage as the immediate result
SCA-18

a) The essential elements of such an action are false representation of fact; knowledge or belief that the representation is false, or lack of a sufficient basis for concluding that it is true; intent to induce the party to whom the representation is made either to take, or to refrain from taking some action; justifiable reliance on the representation in taking or not taking this action; and injury or damage as a proximate result of taking or not taking an action in accordance with the representation.

b) As with breach of contract, this theory is available as a defense as well as an affirmative

cause of action. Generally, courts tend to be flexible in their approach to this type of action and to reach a result which best serves the interest of justice.

Show slide SCA-19 Principal Common Law Remedies - Unconscionability

PRINCIPAL COMMON LAW REMEDIES

* Breach of contract
* Breach of warranty
* Strict liability in tort
* Deception/Fraud/Misrepresentation
* UNCONSCIONABILITY

SCA-19

5) The theory of unconscionability is available only as a defense. Its basic premise is that a court should not be a party to the enforcement of an unconscionable contract term, thus, it may simply refuse to enforce such a term. This concept has also been codified in the Uniform Commercial Code and will be discussed in more detail under statutory remedies.

Show slide SCA-20 Buyers' Rights Under Uniform Commercial Code

BUYERS' RIGHTS UNDER UNIFORM COMMERCIAL CODE

* Rejection of non-conforming good or service
* The right to revoke acceptance
* The right to cancel and recover

SCA-20

6. The law governing both commercial and consumer sales transactions has been codified as part of the Uniform Commercial Code, which has been adopted by every state in the United States except Louisiana. In Virginia it is codified as Title 8.2. Technically, the provisions discussed below are applicable only when the consumer has purchased some item of personal property, but the principles involved were derived from the common law and will usually be extended by analogy to contracts for services as well.

a. Under the Uniform Commercial Code, a buyer has certain rights when the seller makes a tender of goods:

1) If the goods fail to conform to the contract in any way, the consumer may reject or accept the whole, or accept any commercial unit or units and reject the rest. If the consumer does reject the goods as non-conforming, the seller has a reasonable opportunity to "cure" the defects which caused the rejection, either through repairs or substitution of different goods.

2) These are the acts which constitute acceptance:

a) the consumer's telling the seller, after a reasonable opportunity to inspect the goods, either that they are conforming or that he will retain them despite their nonconformity or

b) the consumer's failure to make an effective rejection after having had a reasonable opportunity to inspect the goods; or

c) any act by the consumer which is inconsistent with the seller's ownership.

3) The consumer can revoke acceptance within a reasonable time after he discovers, or should have discovered, the basis for such action. Acceptance may be revoked when the consumer accepted the goods:

a) on the reasonable assumption that the nonconformity would be cured and the seller has not done so; or

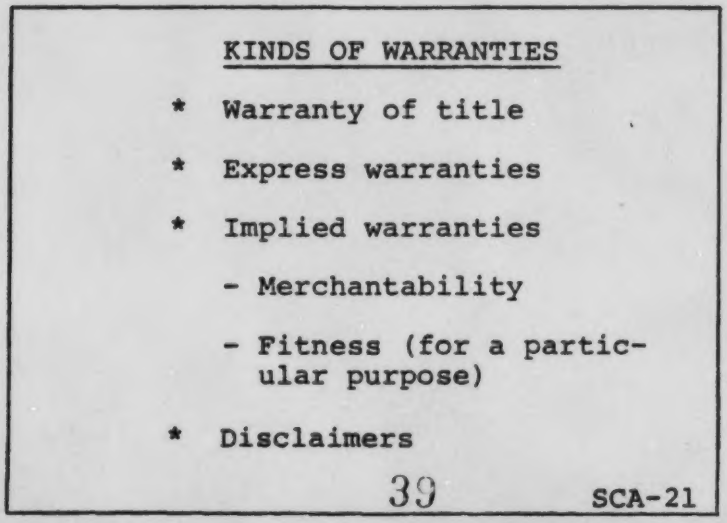
b) without discovering the nonconformity either because of the

difficulty of discovery or as a result of reasonable reliance on assurances from the seller.

4) When the seller fails to make delivery, or when the consumer has rightfully rejected the goods or justifiably revoked his acceptance, he may cancel the contract and recover any money already paid to the seller. In some cases he may be able to obtain specific performance, or damages for having to buy the goods somewhere else.

b. Even if he has accepted the goods and can no longer revoke his acceptance, the consumer may still have a remedy under the breach of warranty theory, or be able to avoid enforcement of all or part of the contract by the seller under the doctrine of unconscionability.

Show slide SCA-21
Kinds of Warranties



c. There are several kinds of warranties.

Show slide SCA-22
Kinds of Warranties -
Warranty of Title

KINDS OF WARRANTIES

* WARRANTY OF TITLE
* Express warranties
* Implied warranties
  - Merchantability
  - Fitness (for a particular purpose)
* Disclaimers

SCA-22

1) Warranty of title is the consumer's assurance of clear title to goods purchased. The fact that the seller executes a contract for sale is sufficient to establish a warranty that good title is conveyed, and that the goods are free from all security interests except those known to the consumer, unless the contract expressly states otherwise.

Show slide SCA-23
Kinds of Warranties -
Express Warranties

KINDS OF WARRANTIES

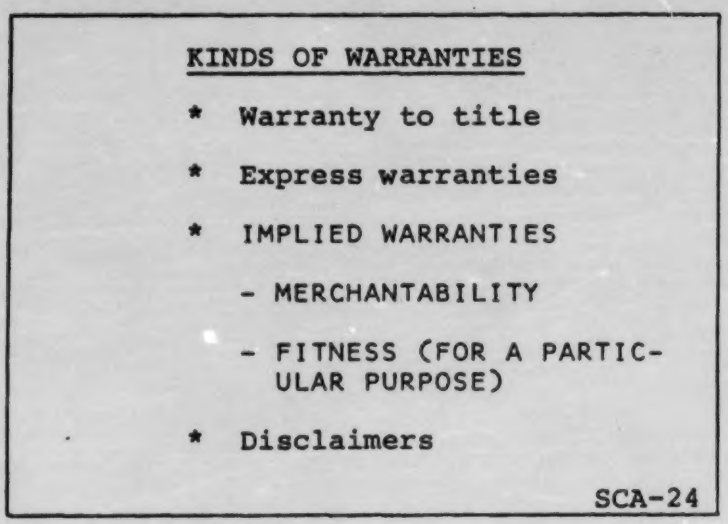
* Warranty of title
* EXPRESS WARRANTIES
* Implied warranties
  - Merchantability
  - Fitness (for a particular purpose)
* Disclaimers

40

SCA-23

2) Express warranties may be created by affirmations of fact, descriptions of the goods, and samples or models, which are made a part of the basis for the bargain. There is no requirement that express warranties be made prior to completion of the sale, but they must be closely connected with the negotiating process. There is no requirement of specific intent on the part of the seller to create an express warranty. The test is whether the particular representations of the seller have reasonably, under the circumstances of the transaction, become part of the basis of the bargain.

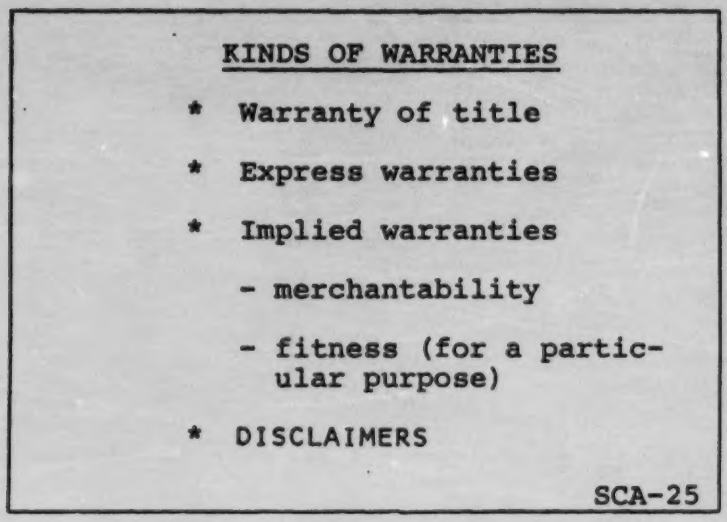
Show slide SCA-24
Kinds of Warranties -
Implied Warranties



3) An implied warranty of merchantability is made in all instances in which the seller is a merchant with respect to the goods being sold. Its

basic thrust is the goods are warranted to be suitable for the ordinary purposes for which they are sold. An implied warranty of fitness for a particular purpose arises when the seller has reason to know the particular purposes for which the consumer is buying the goods, and that the consumer is relying on the seller's skill or judgment to select an item suitable for that purpose. The warranty is that the item will be suitable for the consumer's purposes. Whether or not such a warranty has been created in any particular transaction is a question of fact. It is not determinative, however, that the seller is only an occasional one, rather than a merchant with respect to the goods being sold. Neither is it determinative that the goods involved are brand name ones; this is only one fact to be considered in determining whether the consumer relied upon the seller's expertise.

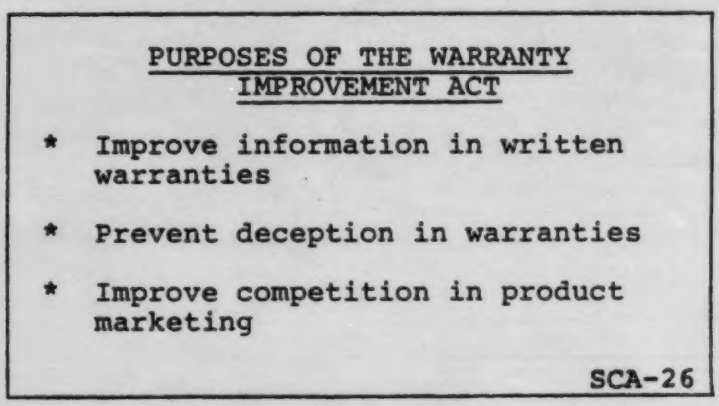
Show slide SCA-25
Kinds of Warranties -
Disclaimers



4) Disclaimers are statements denying any warranty not specifically stated. Warranties of title can only be excluded or modified by specific language or circumstances which give the consumer reason to know that the title to the goods sold is not guaranteed. Express warranties, except warranties of description, can be disclaimed by a statement to the effect that no such warranty exists. Warranties of description are excepted because the seller must describe the goods as something, and he cannot avoid delivering that which he has described. Implied warranties can be disclaimed, but the disclaimer must be in writing and conspicuously displayed. In addition

to the disclaimers already mentioned, a seller may instead provide a warranty, but limit the remedies available to the consumer for a breach of warranty. Such limitations are subject to attack as being unconscionable. It has been found that those limitations which exclude liability for damages for personal injury caused by defects in the goods, establish a prima facie case of unconscionability. Disclaimers are subject the same attack. Warranties (or more specifically, their breach) may be used by the consumer in a number of different ways. For example, as a defense in a suit by the seller; in a suit for recission of a contract and recovery of money paid; or in a suit for damages caused by the defect which is the basis for the consumer's breach of contract.

Show slide SCA-26
Purposes of the Warranty Improvement Act


PURPOSES OF THE WARRANTY IMPROVEMENT ACT
* Improve information in written warranties
* Prevent deception in warranties
* Improve competition in product marketing
SCA-26

5) The law of warranties in consumer transctions is also affected by Title I of the Magnuson-Moss Federal Trade Commission Warranty Improvement Act which became effective July 4, 1975. The stated purposes of this Act are to improve the adequacy of information with written warranties, prevent deception, and improve competition in the marketing of consumer products. The Act's basic thrust is to regulate the description, content and fulfillment of representations in written warranties in consumer transactions. It does not require the giving of a warranty with any product, but it does require sellers who do give them to make decisions concerning disclosure, advertising and promotion of warranties, restrictions on disclaimers of implied warranties, and limitation on the duration of written and implied warranties.

Show slide SCA-27
Requirements for
Unconscionability

REQUIREMENTS FOR UNCONSCIONABILITY

* Oppressive terms
* No reasonable alternative

SCA-27

6) A court may refuse to enforce any contract or any clause of

a contract if it finds that, as a matter of law, they were unconscionable at the time they were made. The parties may present any evidence concerning the circumstances surrounding the contract's making. The basic test set forth in the comments is easy to state but difficult to apply. This test is "whether, in the light of the general commercial background and the commercial needs of the particular trade, or case, the clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the contract." This section is available only as a defense but affords a court great latitude in determining whether to enforce contracts of sale in consumer transactions. A starting point for the consumer is to be able to show oppressive terms offered on a take-it-or-leave-it basis, and no reasonable alternatives available. Other relevant factors include the consumer's education, knowledge of the language in which the contract is written, and bargaining power relative to that of the seller.

Show slide SCA-28
Provisions of the Virginia Consumer Protection Act

PROVISIONS OF THE VIRGINIA CONSUMER PROTECTION ACT

* Unlawful practices
* Investigative orders
* Assurance of voluntary compliance
* Restraint of prohibited acts
* Civil penalites
* Individual action for damages

SCA-28

7. There are a number of other Virginia statutes which can be of great assistance to the consumer, either through private action, or enforcement action by state or local officials or both. The Virginia Consumer Protection Act was passed in 1977. It was intended by the legislature to promote fair and ethical standards between suppliers and the consuming public.

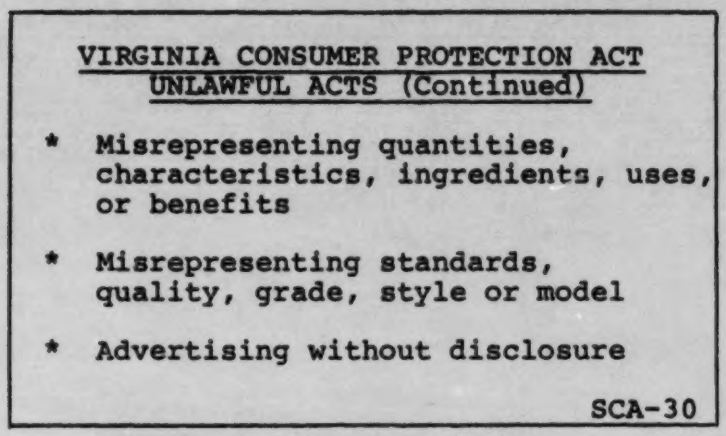
Show slide SCA-29
Virginia Consumer Protection Act - Unlawful Acts

VIRGINIA CONSUMER PROTECTION ACT UNLAWFUL ACTS

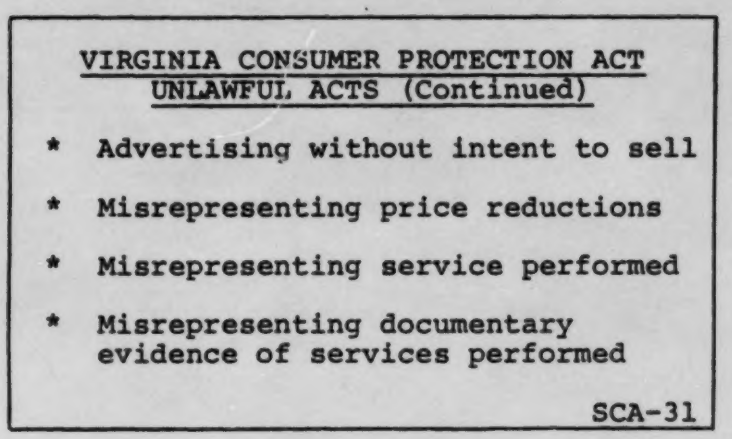
* Misrepresentation of ownership
* Misrepresentation of source
* Misrepresentation of affiliation
* Misrepresentation of geographic origins

SCA-29

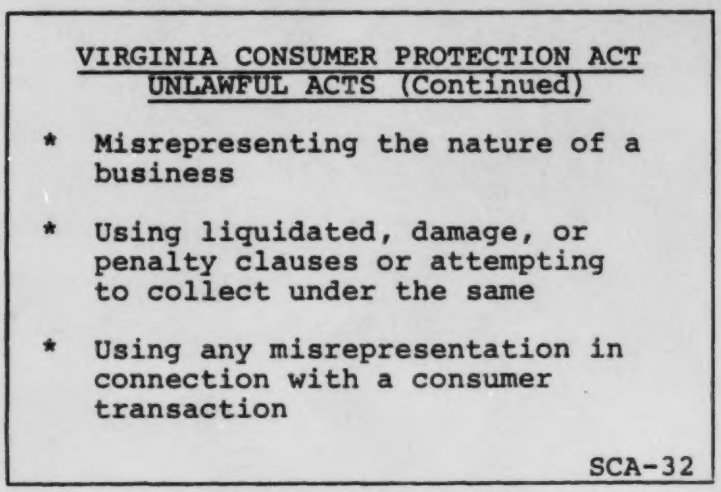
Show slide SCA-30
Virginia Consumer
Protection Act -
Unlawful Acts
(Continued)


VIRGINIA CONSUMER PROTECTION ACT
UNLAWFUL ACTS (Continued)
* Misrepresenting quantities, characteristics, ingredients, uses, or benefits
* Misrepresenting standards, quality, grade, style or model
* Advertising without disclosure
SCA-30

Show slide SCA-31
Virginia Consumer
Protection Act -
Unlawful Acts
(Continued)


VIRGINIA CONSUMER PROTECTION ACT
UNLAWFUL ACTS (Continued)
* Advertising without intent to sell
* Misrepresenting price reductions
* Misrepresenting service performed
* Misrepresenting documentary evidence of services performed
SCA-31

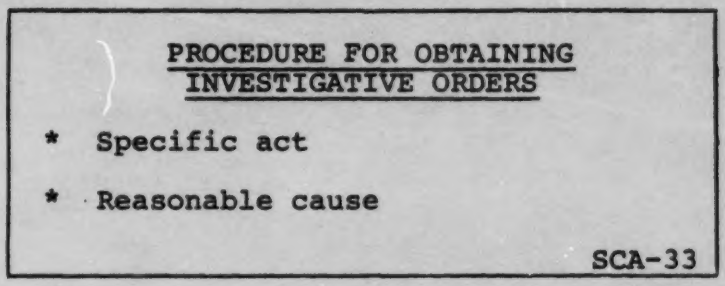
Show slide SCA-32
Virginia Consumer
Protection Act -
Unlawful Acts
(Continued)


VIRGINIA CONSUMER PROTECTION ACT
UNLAWFUL ACTS (Continued)
* Misrepresenting the nature of a business
* Using liquidated, damage, or penalty clauses or attempting to collect under the same
* Using any misrepresentation in connection with a consumer transaction
SCA-32

a. The heart of the Act is a list of 14 practices which are made unlawful, but equally important is an

enforcement scheme to halt occurences of any of these practices.

Show slide SCA-33
Procedure for Obtaining
Investigative Orders



b. Equal authority is given to the Attorney General, all commonwealth's attorneys, and all city and county attorneys to compel the production of "data and information" relevant to a suspected violation of the Act. They do so by applying to the Circuit Court (i.e., the one whose jurisdiction includes the respondent's residence or principal place of business) for an investigative order. The official seeking such an order must have first made an unsuccessful, good faith effort to obtain the relevant data and information directly from the respondent and must provide the following information in the application:

1) the specific act or practice alleged to be in violation of the Act;

2) the grounds for concluding that reasonable cause exists to believe that a violation has occurred, or is about to occur;

3) the category or class of data or information requested; and

4) the reasons why the official is unable, or why it is impractical, to obtain the data or information without a court order.

Show slide SCA-34 Provisions of the Virginia Consumer Protection Act - Assurance of Voluntary Compliance

PROVISIONS OF THE VIRGINIA CONSUMER PROTECTION ACT

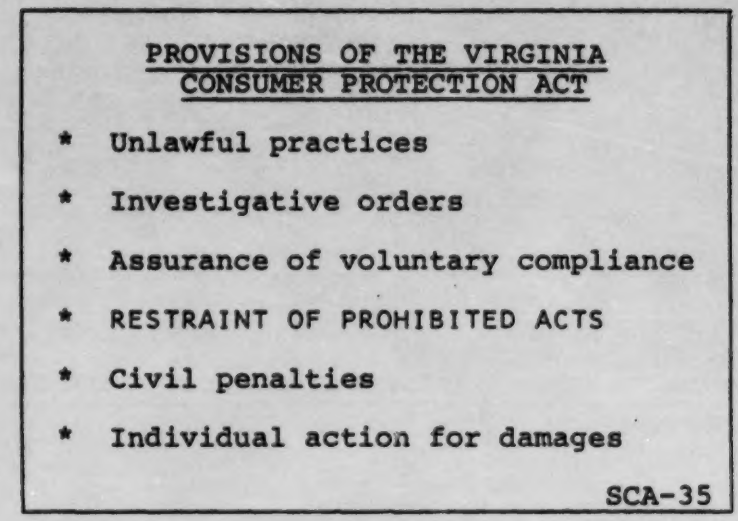
* Unlawful practices
* Investigative orders
* ASSURANCE OF VOLUNTARY COMPLIANCE
* Restraint of prohibited acts
* Civil penalties
* Individual action for damages

SCA-34

c. Once the enforcing official is satisfied that he has sufficient evidence to establish a violation, he may seek to halt it in either of two ways. The first is to accept an "assurance of voluntary compliance," which is not "an admission of guilt or a violation for any purpose." It is,

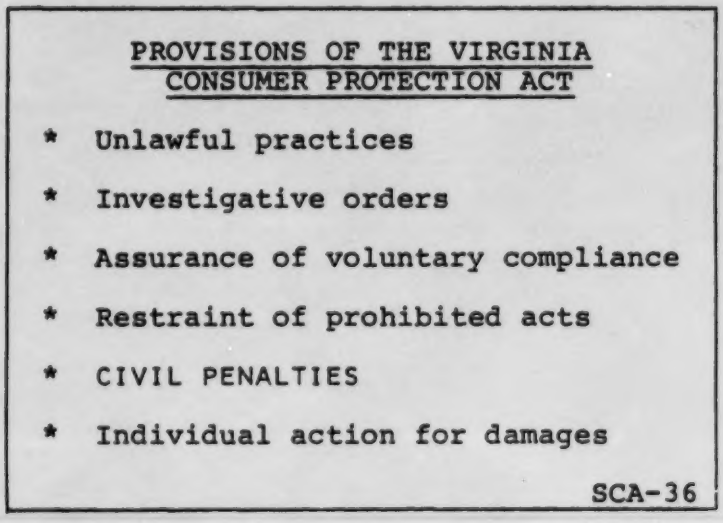
however, filed with (and subject to the approval of) the appropriate circuit court.

Show slide SCA-35 Provisions of the Virginia Consumer Protection Act - Restraint of Prohibited Acts


PROVISIONS OF THE VIRGINIA CONSUMER PROTECTION ACT
* Unlawful practices
* Investigative orders
* Assurance of voluntary compliance
* RESTRAINT OF PROHIBITED ACTS
* Civil penalties
* Individual action for damages
SCA-35

d. The enforcing official may also initiate an action in the appropriate circuit court "to enjoin any violation of the Act."

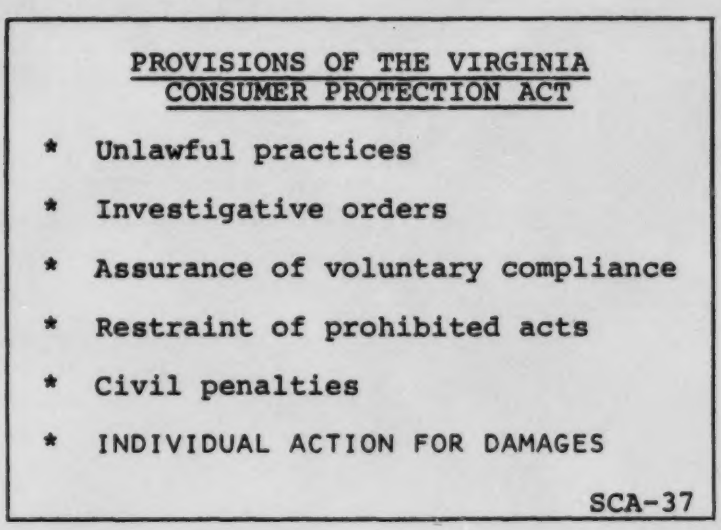
Show slide SCA-36 Provisions of the Virginia Consumer Protection Act - Civil Penalties


PROVISIONS OF THE VIRGINIA CONSUMER PROTECTION ACT
* Unlawful practices
* Investigative orders
* Assurance of voluntary compliance
* Restraint of prohibited acts
* CIVIL PENALTIES
* Individual action for damages
SCA-36

e. Such violation, as well as violation of an assurance of voluntary

compliance or an injunction, are punishable by a civil fine of up to $5,000 per violation. Violation of an injunction or other court order is also punishable as contempt of court. Certainly this enforcement procedure should prove beneficial in decreasing the number of consumer abuses, but it is of no direct benefit to a consumer who has already been victimized since there is no provision for recovery of damages on behalf of consumers by any enforcing official.

Show slide SCA-37 Provisions of the Virginia Consumer Protection Act - Individual Action for Damages


PROVISIONS OF THE VIRGINIA CONSUMER PROTECTION ACT
* Unlawful practices
* Investigative orders
* Assurance of voluntary compliance
* Restraint of prohibited acts
* Civil penalties
* INDIVIDUAL ACTION FOR DAMAGES
SCA-37

f. The Act does provide, however, for a private action to recover the greater part of actual damages caused by a violation or $100. It also authorizes the court to award attorney's fees and costs.

In such a private action, the consumer has to prove that a violation has occurred and that the violation caused damages.

8. Prior to the passage of the Virginia Consumer Protection Act, the principal Virginia consumer fraud statutes were found in the Virginia Code, sections 18.2-214 through 246, all of which are still in effect.

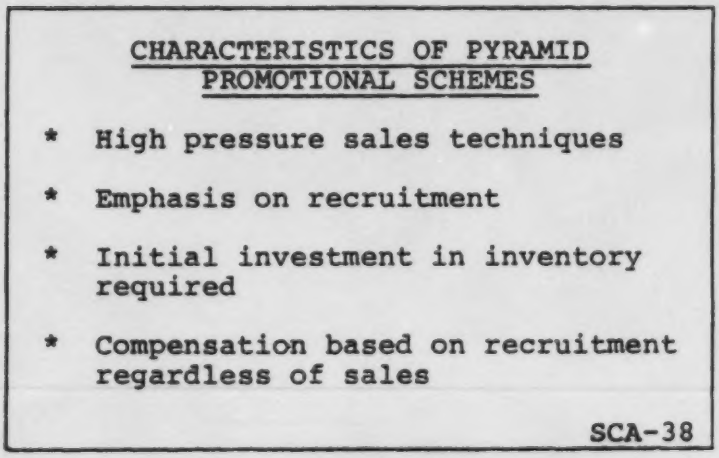
a. One of the more important of these is the section that makes unlawful all actions associated with a pyramid promotional scheme and declares null and void, as against public policy, all contracts between participants in and the operators of such schemes (Virginia Code 18.2-239).

1) A pyramid promotional scheme is defined as "any program utilizing a pyramid or chain process by which a participant gives a valuable consideration for the opportunity to receive compensation of things of value in return for inducing other persons to become participants in the program..." In simple terms, it is a program theoretically based on the sale of some

product but in which the emphasis is on the recruitment of new members rather than on product sales.

2) It must be pointed out, however, that not all multi-level marketing programs are pyramid promotional schemes. If the only income a participant earns from recruitment is based entirely on sales of those recruits, the program is not a pyramid promotional scheme. This fact is reflected in the language which defines "compensation" so as not to include "payment based on sales of goods or services to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme..." The following are characteristics which distinguish a pyramid promotional scheme:

Show slide SCA-38 Characteristics of Pyramid Promotional Schemes


CHARACTERISTICS OF PYRAMID PROMOTIONAL SCHEMES
* High pressure sales techniques
* Emphasis on recruitment
* Initial investment in inventory required
* Compensation based on recruitment regardless of sales
SCA-38

a) high pressure sales techniques at "opportunity meetings";

b) emphasis on recruitment rather than on sales;

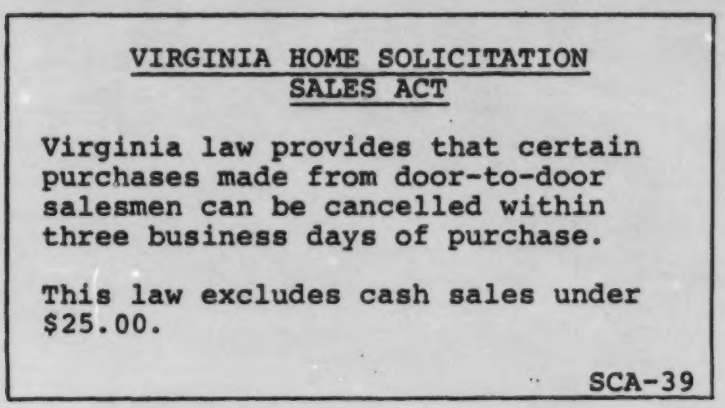
c) requirement of a large initial investment by new participants for a beginning inventory; and

d) compensation based solely on the fact of recruitment (i.e., purchase of inventory) regardless of whether recruits ever make any sales.

b. Another is the section that prohibits referral sales programs in which the consumer's renumeration is dependent upon persons whom he refers entering into a contract of sales or lease. Programs in which the consumer can earn a fee solely by referring persons, or where the fee is dependent upon the referral's agreeing to a demonstration of some sort, are not affected. Contracts for the prohibited type of programs are declared null and void. The consumer may elect to retain the goods or service without any obligation to make additional payments, or "to avoid the transaction and to recover

from the seller or leasor any sums paid . . . pursuant to the transaction."

Show slide SCA-39
Virginia Home
Solicitation
Sales Act


VIRGINIA HOME SOLICITATION SALES ACT
Virginia law provides that certain purchases made from door-to-door salesmen can be cancelled within three business days of purchase.
This law excludes cash sales under $25.00.
SCA-39

9. The Virginia Home Soliciation Sales Act is designed to cover consumer sales or leases of goods "in which the seller or a person acting for him engages in a personal solicitation of the sale or lease at any residence other than that of the seller . . ." and in which the consumer agrees to buy or to lease at that location.

a. In all such sales the consumer has until midnight of the third business day (Saturday is a business day), following the date upon which he agrees to purchase or lease, to cancel this transaction.

b. This right cannot be waived or modified except in certain circumstances in which "the buyer requests the seller

to provide goods or services without delay because of an emergency . . ." If the seller obtains a waiver or modification under any other circumstances, it is null and void, and the consumer's right will run until the third business day following his learning of that fact.

c. The seller must affirmatively inform the consumer in writing of this right to cancel. If he does not, the right remains in effect indefinitely. If the consumer exercises his right to cancel, the seller must return all payments, goods taken as a trade-in (or their cash value as determined by the trade-in allowance), and all evidence of an indebtedness.

d. The consumer must take reasonable care of any goods delivered prior to cancellation, but is not obligated to return them until the seller has complied with his obligations.

e. If the seller does not demand their return within 20 days (and after satisfying his obligations) of cancellation, the consumer may keep the goods and is not obligated to pay

for them. Similarly, the consumer is not obligated to pay for any services performed by the seller prior to cancellation.

f. Although not expressly covered by the statute, it is reasonable to conclude that the consumer is also not obligated to pay for goods or services which are forced upon him after concellation. He should, however, when possible refuse such goods or services.

g. If the seller should fail to identify his purpose immediately in a home solicitation, or misrepresents his purposes in any way, the consumer has 30 days in which to exercise his right to cancel.

h. The principal way in which sellers attempt to avoid the effects of this Act is to conduct transactions in such a way as to place them outside the definition of a home solicitation sale by using the language which excludes sales or leases "made persuant to prior negotiations between the parties." It is still an open question, but a correct reading of this language

would presumably exclude such minimal prior negotiations as a telephone conversation.

10. The enforcement of these statutes is somewhat complicated as a result of a reorganization of the Code. Under the Code, the Attorney General has the authority to "investigate and bring an action in the name of the Commonwealth to enjoin a violation . . . of any of them." Commonwealth's attorneys and city or county attorneys have the same authority. The commonwealth's attorneys also have authorization to bring an action "upon their own complaint or upon the complaint of any person, firm, corporation or association." Violation of some of these statutes is also a misdemeanor subject to criminal sanctions. Prosecutions for violations as misdemeanors can be initiated only by the appropriate commonwealth's attorney.

11. As with the Consumer Protection Act, there is no provision for any enforcing official to recover damages on behalf of consumers, but private remedies are available. "Certified copies of the

transcript and exhibits in evidence in any final proceeding in which the Attorney General has obtained a permanent injunction . . . are admissible in evidence in any action by any person claiming damages as a result of the enjoined conduct." Transcripts and exhibits from actions in which a permanent injunction obtained by a commonwealth's attorney, or a county or city attorney, are also admissible. Consumers who bring private actions may also recover attorney's fees and costs. In instances where conduct constitutes a violation of the Consumer Protection Act and another statute, it is far easier for the enforcing official to seek an assurance of voluntary compliance under the Consumer Protection Act than an injunction under either. This course of action, however, leaves the consumer with the burden of compiling all evidence necessary to maintain a private action.

C. Summary and Evaluation

Summary Suggestions

At the end of your presentation you may wish to:

1. Give a general summary.
2. Answer any questions as time allows.
3. Administer a quiz designed to measure the accomplishment of objectives. If a quiz is given, review the answers and explain any areas where there seems to be a marked lack of understanding.
4. If an evaluation form is to be used, it should be distributed and collected at the conclusion of the presentation and questions.

TRUE/FALSE QUIZ

1. The first action which a consumer should take to resolve a grievance is to (whenever possible) discuss his complaint with the other party.

   a. True
   b. False

2. Persons selling consumer goods are required to give certain warranties on those goods.

   a. True
   b. False

3. Consumers have no remedies under the Uniform Commercial Code (UCC) once they have "accepted" the goods in question.

   a. True
   b. False

4. The implied warranty of merchantability arises only when the seller is a "merchant" in the type of goods involved in the transaction.

   a. True
   b. False

5. If a consumer needs information as to whether there is any governmental agency or private association which can assist him, he should first contact either the Virginia Office of Consumer Affairs or the appropriate local office of consumer affairs.

   a. True
   b. False

6. There is no statutory basis on which any state or local official in Virginia can seek private redress of consumer grievances.

   a. True
   b. False

7. In any given consumer problem there may be several available legal theories under which a remedy may be sought.

   a. True
   b. False

8. Virginia consumers have until midnight of the third business day following a home solicitation sale to cancel that sale.

   a. True
   b. False

9. Express warranties can only be created when the seller intends to do so.

   a. True
   b. False

10. There is no way that either manufacturers or sellers can avoid liability for defective products which cause personal injuries as a result of their defects.

   a. True
   b. False

11. Cases in which the amount in controversy is between $500 and $5,000 can be brought in either a General District Court or a Circuit Court.

   a. True
   b. False

12. Neither the Virginia Office of Consumer Affairs nor a local one has the statutory authority to institute a court action to enjoin violations of the Virginia Comsumer Protection Act of 1977.

   a. True
   b. False

13. Consumers should be extremely wary of any direct marketing program in which they are asked to make a large purchase of inventory and told of the fantastic amounts of money they can earn by getting others to become salesmen.

   a. True
   b. False

14. The General District Courts are the closest thing Virginia has to a small claims court system.

   a. True
   b. False

15. All referral sales programs are illegal under Virginia law.

   a. True
   b. False

16. Consumers should always insist that any promises related to a contract for the purchase of goods or services be reduced to writing and physically attached to the contract.

   a. True
   b. False

17. The Virginia Consumer Protection Act of 1977 does not create a private right of action for consumers who have suffered damage as a result of a violation of that act.

    a. True
    b. False

18. There are many consumer grievances which do not involve any action which violates state or federal law in a way that allows governmental action.

    a. True
    b. False

19. Consumers should give careful consideration to a variety of factors before deciding to proceed on their own in a General District Court.

    a. True
    b. False

20. The Virginia Consumer Protection Act of 1977 allows courts to award attorney fees and costs to consumers who bring a private action under its provisions.

    a. True
    b. False

Answers:

1. a. True--this potential solution should always be exhausted before pursuing others.

2. b. False--there is no such requirement in either state or federal law.

3. b. False--they may revoke their acceptance under the proper circumstances, or they may seek recourse for a breach of warranty.

4. a. True

5. a. True--one of these offices' principal functions is to channel consumer complaints to the proper entity, whether governmental or private, which may be able to resolve them.

6. a. True--they can only seek to enjoin future violations, or, in some cases, institute criminal prosecutions.

7. a. True--the various remedies are not mutually exclusive.

8. a. True--cancellation made when letter mailed.

9. b. False--sellers' intent not required.

10. a. True--under either strict liability in tort (always) or breach of warranty (usually).

11. a. True--under $500 must be brought in General District Court; over $5,000 must be brought in Circuit Court.

12. a. True--such actions can be brought only by the Attorney General, or the appropriate commonwealth's attorney or city/county attorney.

13. a. True--such a program is probably an illegal pyramid promotion, and joining will probably result in the loss of most of their investment.

14. a. True

15. b. False--only those where the payment of the referral fee is dependent upon the referred person making a purchase.

16. a. True--this action will simplify proving that the promises were made and will eliminate problems with a parol evidence clause.

17. b. False--it does create such a right of action.

18. a. True--e.g., breach of contract, breach of warranty.

19. a. True

20. a. True

DISCUSSION QUESTIONS

1. Describe the factors which a consumer should consider, and the steps he would take in bringing an action in a General District Court.

2. Discuss the options available to a consumer under the Uniform Commercial Code after signing a contract for the purchase of goods.

3. Discuss the remedies available to consumers under the Virginia Home Solicitation Sales Act and the procedure for obtaining those remedies.

4. Discuss the types of enforcement actions which state and local officials can take under the Virginia Consumer Protection Act of 1977 and other state consumer laws.

SELECTED BIBLIOGRAPHY ON SOURCES OF ASSISTANCE

A. Articles

Davis, "Protecting Consumers from Overdisclosure and Gobbledygook: An Empirical Look at Simplification of Consumer Credit Contracts," 63 University of Virginia Law Review 841 (1977).

Duesenberg, "Practioner's View of Contract Unconscionability (U.C.C. section 2-302)," 8 Unified Commercial Code Law Journal 237 (1976).

Elden, "Revocation of Acceptance: Interpretation and Application," 8 Unified Commercial Code Law Journal 14 (1975).

Hudak and Carter, "The Erosion of the Holder in Due Course Doctrine: Historical Perspective and Development--Part I," 9 Unified Commercial Code Law Journal 165 (1976); "Part II," 9 Unified Commercial Code Law Journal 235 (1977).

Hurd and Bush, "Unconscionability: A Matter of Conscience for California Consumers," 25 Hastings Law Journal 1 (1973).

Magnuson, "Fair Disclosure in the Marketplace of Warranty Promises--Truth in Warranties for Consumers," 8 Uniform Commercial Code Law Journal 117 (1975).

McCall, "Due Process and Consumer Protection: Concepts and Realities in Procedure and Substance--Clear Action Issues," 25 Hastings Law Journal 1351 (1974).

Merritt, "New FTC Rule: Preservation of Claims and Defenses in Consumer Credit Transactions--Uniform Protection Comes to the Scene," 9 Uniform Commercial Code Law Journal 65 (1976).

Shapo, "A Representational Theory of Consumer Protection: Doctrine, Function and Legal Liability for Product Disappointment," 60 University of Virginia Law Review 1109 (1974).

B. Books

Anderson, Joanne. For the People: A Consumer Action Handbook. Reading, Massachusetts: Addison-Wesley, 1977.

Cooper, George, Curtis Berger et al. Cases and Materials on Law and Poverty. Second edition. St. Paul, Minnesota: West Publishing Company, 1973.

Corbin, Arthur. Corbin on Contracts. St. Paul, Minnesota: West Publishing Company, 1952.

Directory of Consumer Protection and Environmental Agencies. Orange, New Jersey: Academic Media, 1973.

Epstein, David. Consumer Protection in a Nutshell. St. Paul, Minnesota: West Publishing Company, 1976.

Matthews, Douglas. Sue the B*st*rds. New York: Arbor House, 1973.

McCall, James R. Consumer Protection. St. Paul, Minnesota: West Publishing Company, 1977.

McCall, James R. Statutory Supplement to Consumer Protection. St. Paul, Minnesota: West Publishing Company, 1977.

Oppenheim, S. Chesterfield and Glen E. Weston. Unfair Trade Practices and Consumer Protection. Third edition. St. Paul, Minnesota: West Publishing Company, 1974.

Prosser, William. The Law of Torts. Fourth edition. St. Paul, Minnesota: West Publishing Company, 1971.

U. S. Office of Consumer Affairs. Guide to Federal Consumer Services. Washington, D. C.: Government Printing Office, 1971.

U. S. Office of Consumer Affairs. State Consumer Action. Washington, D. C.: Government Printing Office, 1971.

U. S. Office of Consumer Affairs. State, County and City Consumer Office Directory. Washington, D. C.: Department of Health, Education and Welfare, 1977.

Virginia Citizens Consumer Council. Consumer Complaint Action Guide. Alexandria, Virginia: Virginia Citizens Consumer Council, 1972.

Virginia Office of Consumer Affairs. Consumer Legislation (Virginia). Richmond, Virginia: Virginia Office of Consumer Affairs, 1976.

White, Jack. Angry Buyer's Complaint Directory. New York: P. H. Wyden, 1974.

C. Other

"Annual Surveys of Virginia Law--Commercial Law," 56 University of Virginia Law Review 1387 (1970); 57 University of Virginia Law Review 1527 (1971); 58 University of Virginia Law Review 1183 (1972); 59 University of Virginia Law Review 1426 (1973); 60 University of Virginia Law Review 1475 (1974); 61 University of Virginia Law Review 1668 (1975); 62 University of Virginia Law Review 1375 (1976).

APPENDIX

ALTHOUGH THE FOLLOWING APPENDIX CONTAINS SOME GENERAL INFORMATION, YOU ARE REFERRED TO THE CONSUMER EDUCATION REFERENCE MANUAL FOR MORE EXTENSIVE MATERIAL ON SOURCES OF CONSUMER ASSISTANCE AND INFORMATION. A COPY OF THE REFERENCE MANUAL IS AVAILABLE IN EACH PARTICIPATING CONSUMER AFFAIRS OFFICE. WE ENCOURAGE THE VOLUNTEERS PARTICIPATING IN THE PROJECT TO SHARE PERTINENT MATERIAL WITH THEIR CONSUMER AFFAIRS OFFICE SO THAT THE REFERENCE MANUAL CAN BE CONTINUALLY EXPANDED.

SELF-HELP GUIDE OUTLINE

I. Self-Help: Dealing Directly with Merchant

A. Keep All Pieces of Paper

Sales slips; warranties; business cards; advertisements, etc.; memoranda of all discussions--both face to face and phone--always get the full name and position of the person with whom you spoke

B. Check on the Law

C. Organize Your Argument - chronologically is best

D. Call or Go See the Merchant

1. Present your case calmly and in an orderly fashion.

2. Present it to the manager or person who is designated to handle customer complaints.

3. Give the person a chance to check on the matter and get back to you--ask how long it will take and add a percentage of the time (says it will take a week, add 3 days = 10 days) and say you will expect a call on _____. Specify when and where he should call.

4. Take notes on what is said.

5. If possible, take a disinterested person with you as a witness.

E. Be Willing to Compromise. Are your expectations realistic? What is your bottom line? Know it when you start negotiating.

F. Be Prepared to Appeal. Who is the decision-maker's boss?

II. Seeking Third-Party Assistance

A. Trade Associations, Corporate Hierarchy, Distributorships

1. Does the decision-maker have a boss? Central corporation office or regional office?

2. If an authorized dealer, who is the manufacturer's representative?

3. Is the merchant a member of one or more trade associations? NADA--National Automobile Dealers Association, for example. They are generally related to product lines.

4. Who issues license to operate in particular jurisdictions?

B. Member of Other Associations?

Better Business Bureau
Chamber of Commerce

C. Within Jurisdiction of Government Agency?

1. Federal Regulatory Agency--consumer office
2. State regulatory agency
3. Virginia consumer affairs office
4. Local consumer affairs
5. Military members and dependents--Legal Assistance Officer Community Services
6. AFDCB--Armed Forces Disciplinary Control Board--can negotiate with businesses or see local Staff Judge Advocate or Provost Marshall's Office

D. Publicity as Leverage

1. newspaper--general assignment reporters
   Action Line (Star)
2. broadcasters--e.g. WRC-Channel 4 consumer ombudsman

E. Litigation

1. General District Court--represent yourself (see pamphlet, "How to Sue in Court Not of Record")*

2. Virginia Lawyer Referral Service--800-552-7977 This service provides for a 30-minute consultation for $15.00.*

3. Retaining an attorney--weigh costs and benefits; get full information before deciding to sue

   a. contingency fee
   b. straight fee
   c. Consumer Protection Act--recovery of attorney's fees and costs provided for where violation shown.

* See Consumer Education Project Reference Manual in your consumer affairs office or contact your consumer affairs office for information.

SOME MORE FREQUENTLY CALLED CONSUMER PHONE NUMBERS:

U. S. Consumer Product Safety Commission..800-638-2666*

Virginia Citizens Assistance.....800-552-9963*

State Corporation Commission.....800-552-9760*

Virginia Energy Office.....800-552-5601*

State Office of Consumer Affairs.....800-552-9760*

Northern Virginia Office of
Consumer Affairs.....703-573-1286

Local Consumer Offices
- Alexandria.....703-750-6697
- Arlington.....703-558-2142
- Fairfax.....703-691-3214
- Prince William.....703-221-4156

*Toll free numbers from Virginia area codes

SOURCES OF LEGAL ASSISTANCE FOR MILITARY PERSONNEL

PENTAGON	
Department of the Army	202-695-4321
Department of the Air Force	202-695-2450
ANDREWS AIR FORCE BASE	301-981-3622
ARLINGTON HALL STATION	703-692-6397 703-692-6883
BOLLING AIR FORCE BASE	202-767-5347 202-767-4439
COAST GUARD	202-472-5894
FORT BELVOIR	703-664-2630 703-664-2744
FORT McNAIR	202-693-1782
FORT GEORGE G. MEADE	301-677-3898 301-677-7535
HENDERSON HALL	703-694-2385 703-694-3800
NATIONAL NAVAL MEDICAL CENTER	301-295-0086 301-295-0087
NAVAL DISTRICT OF WASHINGTON	202-433-4331 202-433-4332
WALTER REED ARMY MEDICAL CENTER	202-576-2538 202-576-2531

GENERAL SOURCES OF CONSUMER INFORMATION

THE ADVERTISING COUNCIL, INC.
825 THIRD AVENUE
NEW YORK, NEW YORK 10022
212-758-0400

Booklets on the American Economic System.

AETNA LIFE AND CASUALTY
151 FARMINGTON AVENUE
HARTFORD, CONNECTICUT 06156
203-273-2843

Educational materials on money management and financial planning and discussion guides available.

AMERICAN COUNCIL ON CONSUMER INTERESTS
UNIVERSITY OF MISSOURI-COLUMBIA
162 STANLEY HALL
COLUMBIA, MISSOURI 65201
314-882-4450

Membership organization serving professionals in consumer affairs and consumer education. Publishes the ACCI Newsletter, Consumer Education Forum and The Journal of Consumer Affairs.

AMERICAN GAS ASSOCIATION
1515 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22209
703-524-2000

Publishes booklet "A Consumer's Guide to Energy Conservation with Natural Gas" and other materials on natural gas.

AMERICAN HOME ECONOMICS ASSOCIATION
2010 MASSACHUSETTS AVENUE, N. W.
WASHINGTON, D. C. 20036
202-833-3100

Professional membership organization. Publishes education material on home economics and consumer topics.

ASSOCIATED CREDIT BUREAUS, INC.
6767 SOUTHWEST FREEWAY
HOUSTON, TEXAS 77074
713-774-8701

Pamphlets on current credit issues: Women and Credit, the Fair Credit Reporting Act, money management.

AUTOMOBILE OWNERS ACTION COUNCIL
1411 K STREET, N.W. SUITE 800
WASHINGTON, D. C. 20005
202-638-5550

Locally, handles consumer complaints. At national level, provides "preventive" consumer education materials.

CHAMBER OF COMMERCE OF THE
UNITED STATES
1615 H STREET, N. W.
WASHINGTON, D. C. 20062
202-659-6183

Educational materials available on American economic system, money management, ecology, etc., including teaching manuals and activity sheets. Catalog with prices available on request.

CHANGING TIMES EDUCATION SERVICE
1729 H STREET, N.W.
WASHINGTON, D. C. 20006
202-337-8600

Produces variety of multimedia learning resources for teaching consumer education, including a teacher training program. Prices range from 75¢ to $79.50.

CHESAPEAKE AND POTOMAC TELEPHONE CO.
800 17TH STREET, N. W.
8TH FLOOR
WASHINGTON, D. C. 20006
202-392-3713

Publications on C & P services and policies. Public talks providing consumer tips. Films available at no charge.

CONFERENCE OF CONSUMER ORGANIZATIONS
BOX 158
NEWTON CENTER, MASSACHUSETTS 02159

Works to encourage development of consumer groups, to increase awareness of consumer issues, sponsors workshops, etc. Publishes newsletter.

CONSUMER ACTION NOW'S COUNCIL ON
ENVIRONMENTAL ALTERNATIVES
355 LEXINGTON AVENUE
NEW YORK, NEW YORK 10017
212-682-8915

Offers educational material on solar energy and energy conservation. Sponsors seminars and publishes a newsletter.

CONSUMER CREDIT COUNSELING SERVICE
OF WESTERN PENNSYLVANIA, INC.
MCKEESPORT, PENNSYLVANIA 15132
412-672-5780

Teaching materials available regarding family economics. "A Teacher's Guide to Money Management" ($2.50 per copy) includes case studies, management skills and bibliography.

CONSUMER CREDIT COUNSELING AND EDUCATIONAL
SERVICE OF NORTHERN VIRGINIA
3541 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030
703-591-9020

Information on credit, personal money management.

CONSUMER EDUCATION DEVELOPMENT CO.
BOX 424
STORRS, CONNECTICUT 06268
203-486-2728

Instructional materials - films, study guides - for purchase or rental.

CONSUMER INFORMATION CENTER
GENERAL SERVICES ADMINISTRATION
18TH AND F, N. W.
WASHINGTON, D. C. 20405
202-566-1794

CONSUMER INFORMATION CENTER
PUEBLO, COLORADO 81009

The Center publishes a free quarterly catalog. For single copies, contact Washington address for bulk orders, write to Colorado.

CONSUMER PROTECTION CENTER
1779 GOVERNMENT STREET
BATON ROUGE, LOUISIANA 70802
504-383-6027

Publishes monthly newspaper, "Lemon-Aid," $4.00 per year. Also a series of education sessions geared for low-income consumers.

CONSUMER'S RESEARCH, INC.
WASHINGTON, NEW JERSEY 07882
201-689-3300

Publishes Consumers' Research Magazine monthly, $10.00 per year.

CONSUMERS UNION OF THE UNITED
STATES, INC.
256 WASHINGTON STREET
MOUNT VERNON, NEW YORK 10550
914-664-6400

Publishes monthly Consumer Reports and yearly Buying Guide. Also films on a variety of topics.

CONSUMER SURVIVAL KIT
MARYLAND CENTER FOR PUBLIC
BROADCASTING
OWINGS MILLS, MARYLAND 21117

Video casette of weekly TV broadcasts available. Also copies of scripts on consumer issues available at cost.

COOPERATIVE EXTENSION SERVICE
VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY
BLACKSBURG, VIRGINIA 24061

Publishes a variety of informational and educational materials. Available locally through County Extension Agents.

COUNCIL OF BETTER BUSINESS BUREAUS
1150-17TH STREET, N. W.
WASHINGTON, D. C. 20036
202-467-5338

Tip sheets on a multitude of consumer topics, generally free.

CREDIT UNION NATIONAL
ASSOCIATION, INC.
1617 SHERMAN AVENUE
MADISON, WISCONSIN 53704
608-241-1211

Publishes consumer facts packets and Everybody's Money magazine.

CURRICULUM INNOVATIONS, INC.
501 LAKE FOREST AVENUE
HIGHWOOD, ILLINOIS 60040
312-432-2700

Publishes Current Consumer, a periodical for high school students.

DIRECT SELLING ASSOCIATION
1720 M STREET, N. W.
SUITE 610
WASHINGTON, D. C. 20036

Brochures on direct selling, in-home selling practices.

PAUL H. DOUGLAS CONSUMER
RESEARCH CENTER
1012 14TH STREET, N. W.
WASHINGTON, D. C. 20005
202-347-5813

Education and research branch of the Consumer Federation of America. Publishes a variety of consumer education materials, including the Action Faction, a monthly newsletter available free to non-profit groups.

ELECTRONIC INDUSTRIES ASSOCIATION
2001 I STREET, N.W.
WASHINGTON, D. C. 20006
202-457-4900

Free consumer education pamphlets on audio product safety, television safety, tape recorders, and electronic product service.

FEDERAL GOVERNMENT - SEE DIRECTORY OF FEDERAL CONSUMER SERVICES

(Multiple copies available free from Consumer information Center, Pueblo, Colorado, 81990. Single copies, free, from Consumer News, Office of Consumer Affairs, 621 Reporter Building, Washington, D. C. 20201. Phone 202-755-8830.)

FURNITURE INDUSTRY CONSUMER
ACTION PANEL
P. O. BOX 951
HIGH POINT, NORTH CAROLINA 27261

Informational brochures on buying furniture. Free.

GENERAL MILLS, INC.
P. O. BOX 1113
MINEAPOLIS, MINNESOTA 55440
612-540-3856

Catalog of consumer education materials available.

HOME ECONOMICS EDUCATION ASSOCIATION
1201 16TH STREET, N. W.
WASHINGTON, D. C. 20036
202-833-4138

Publications listing available. President's Newsletter contains suggested resources of consumer information.

INSURANCE INFORMATION INSTITUTE
110 WILLIAM STREET
NEW YORK, NEW YORK 10038
212-233-7650

Free materials include "Educator's Guide to Teaching Auto and Home Insurance." Filmstrips, $5.00 each.

JOINT COUNCIL ON ECONOMIC EDUCATION
1212 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036
212-582-5150

Filmstrips, games, booklets, brochures available on economic issues.

MONEY MANAGEMENT INSTITUTE
HOUSEHOLD FINANCE CORPORATION
PRUDENTIAL PLAZA
CHICAGO, ILLINOIS 60601
312-944-7174

Booklets, filmstrips, teaching guides available.

MONTGOMERY WARD
1 MONTGOMERY WARD PLAZA
CHICAGO, ILLINOIS 60671
312-467-3914

Consumer education pamphlets, guides, product information available.

NATIONAL ASSOCIATION OF MANUFACTURERS
1776 F STREET, N. W.
WASHINGTON, D. C. 20006
202-331-3700

Economic education program and resources directory available at cost.

NATIONAL CONSUMERS LEAGUE
1028 CONNECTICUT AVENUE, N.W.
SUITE 522
WASHINGTON, D.C. 20036
202-797-7600

Conducts consumer education programs. Membership organization with monthly newsletter. Membership, $15.00 for individuals per year.

NATIONAL FOUNDATION FOR
CONSUMER CREDIT
1819 H STREET, N. W.
WASHINGTON, D. C. 20006
202-223-2040

Classroom instructional materials. Directory of non-profit community services and directory of credit counseling centers - single copies free.

NEWSWEEK EDUCATIONAL DIVISION
444 MADISON AVENUE
NEW YORK, NEW YORK 10022
212-350-2000

Multimedia kits, including filmstrips and guides, on money, money management, consumer math, personal law, etc., for sale.

OFFICES OF CONSUMER AFFAIRS - See DIRECTORY OF FEDERAL, STATE, AND LOCAL GOVERNMENT CONSUMER OFFICES, available from the Department of Health, Education, and Welfare, Office of Consumer Affairs, Washington, D. C. 20201. Many offices publish materials dealing with consumer issues. Most copies are free.

OFFICE OF CONSUMERS' EDUCATION
HEW - OFFICE OF EDUCATION
7TH AND D STREET, S. W., ROB#3
ROOM 5624
WASHINGTON, D. C. 20202
202-245-0636

Copies of educational resource materials available.

J. C. PENNEY CO., INC.
1301 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019
212-957-6578

Consumer education modules available for borrowing. Descriptive brochure updated twice yearly.

PHARMACEUTICAL MANUFACTURERS
ASSOCIATION
1155 15TH STREET, N.W.
WASHINGTON, D. C. 20005
202-296-2440

Kit on Consumer Information About Drugs. Publications list and catalog of films available free.

PROCTOR AND GAMBLE
P. O. BOX 599
CINCINNATI, OHIO 45201
513-562-3152

Consumer/economics teaching kits; home economics teaching kits. Free loan film available, "Is Anybody Listening."

SEARS, ROEBUCK & CO.
CONSUMER INFORMATION SERVICES
D/703
CHICAGO, ILLINOIS 60684
312-875-8333

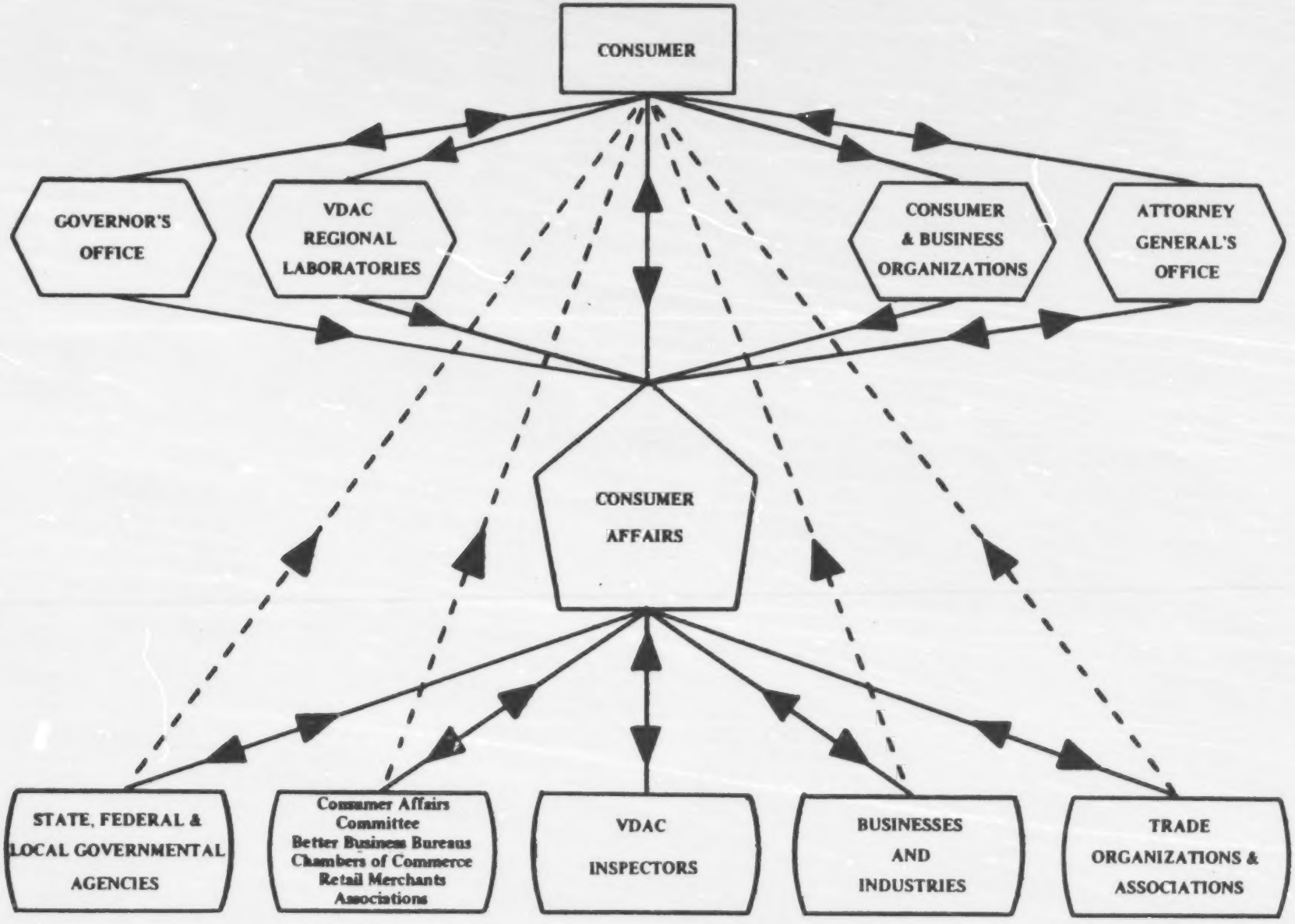
Publications available to broaden understandings of the role of business in our economic system.

THE SPERRY & HUTCHINSON COMPANY
330 MADISON AVENUE
NEW YORK, NEW YORK 10017
212-983-5531

Consumer Services
S&H Company
2900 West Seminary Drive
Ft. Worth, Texas 76133

Listing of various materials free.

COMPLAINT FLOW CHART



APPENDIX COMPILED

by

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Sincerest appreciation is extended to the many individuals who provided information for this section of the module.